IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.670 of 2007

K.Arumugham .. Petitioner

Vs

1. State of Tamil Nadu
   rep. by Inspector of Police
   N-1, Royapuram Police Station
   Chennai 13.

2. State of Tamil Nadu
   rep. by its Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.

3. State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

4. The Superintendent
   Central Prison, Puzhal
   Chennai 600 066. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the second respondent in his proceedings Memo No.91/BDFGISSV/2007 dated 14.3.2007 and quash the same thereby directing the direct the respondents to produce the detenu, namely A.Selvakumar, S/o.K.Arumugam, confined at Central Prison II, Puzhal, Chennai 66 before this Court and set him at liberty.

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For Petitioner : Mr.J.Nagarajan
For Respondents : Mr.P.Kumaresan
Addl. Public Prosecutor

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O R D E R

(Made by P.D.DINAKARAN,J.)

Aggrieved by the order of detention dated 14.3.2007 made in Ref.No.91/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) to detain one Selvakumar, son of Arumugam, branding him as a Goonda, the petitioner, father of the detenu, filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu, who is now confined at Central Prison, Chennai before this Court and set him at liberty.

2. On the basis of a complaint lodged by one Murugesan that on 3.3.2007 at about 2.30 hours, the detenu along with one Mohan, threatened him at the knife point and forcibly took Rs.150/- from his pocket and Rs.100/- from his lungi, causing injury on his right hand and hurled the bottles taken from the nearby shop in the road, which scattered all over the roadside and made the public to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.94/2007 on the file of N1, Royapuram Police Station, for the offence punishable under Sections 341, 336, 427, 392, 397, 307 and 506(2), IPC.

3. The second respondent, taking note of the above case as a ground case and one adverse case, ordered his detention dubbing him as a goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 14.3.2007 mainly on the ground of delay in forwarding the remarks to the detaining authority. Hence, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22

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(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 14.3.2007, a representation was made on behalf of the detenu on 3.4.2007, which was received by the Government on 4.4.2007. Remarks were called for from the detaining authority on 5.4.2007, which was received by the detaining authority on 9.4.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 10.4.2007 and on receipt of the same on 13.4.2007, the detaining authority sent it to the Government on 18.4.2007 after a delay of five days, which is not properly explained. Even taking note of the intervening holidays, viz., 14.4.2007 and 15.4.2007 (being Saturday and Sunday), the delay of three days in forwarding the remarks, within the Chennai City, is admittedly unexplained and inexcusable. The report was received on 19.4.2007, Thereafter, the file was submitted on 19.4.2007 and the same was considered by the Under Secretary and Additional Secretary on 19.4.2007 itself. The file was considered by the Minister on

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21.4.2007. The rejection letter was prepared on 24.4.2007, sent to the detenu on 25.4.2007 and served on 26.4.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of three days, excluding intervening holidays on Saturday and Sunday, in sending the remarks to the Government within the Chennai City, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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2. The Commissioner of Police
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3. The Secretary to Government
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   Fort St. George, Chennai-600 009.

4. The Superintendent
   Central Prison, Puzhal
   Chennai 600 066.

5. The Public Prosecutor
   High Court, Madras.

+ 1 CC To Mr.J.Nagarajan, Advocate SR NO.59940

HCP No.670 of 2007.

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